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RAM NARAIN

v.

STATE OF U.P.

(Criminal Misc. Petition No. 7526 of 2015)

B

IN

Special Leave Petition (Crl.) No.1446 of 2004

AUGUST 07, 2015

C

[PINAKI CHANDRA GHOSE AND R. K. AGRAWAL, JJ.]

*Juvenile Justice (Care and Protection of Children) Act, 2000: 57(a) – Conviction of petitioner-applicant for commission of offence u/s. 302, IPC and imposition of life imprisonment – Subsequent application by him for declaration of his juvenility on the date of incident – Juvenile Justice Board on the basis of school transfer certificate coming to conclusion that the applicant on the date of incident was 15 years, 11 months only and declared him juvenile offender – Petitioner-applicant already served sentence for more than 10 years and still in jail – Held: Applicant should get the benefit under the Act since he was juvenile on the date of commission of the offence – Penal Code, 1860 – s. 302*

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*Upendra Pradhan v. State of Orissa* 2015 (5) SCALE 634; *Ajay Kumar v State of M.P.* (2010) 15 SCC 83; *Hakim v. State* (2014) 13 SCC 427; *Lakhan Lal v. State of Bihar* (2011) 2 SCC 251 – relied on.

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Case Law Reference

2015 (5) SCALE 634	relied on.	Para 4
(2010) 15 SCC 83	relied on.	Para 4
(2014) 13 SCC 427	relied on.	Para 4
(2011) 2 SCC 251	relied on.	Para 4

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CRIMINAL APPELLATE JURISDICTION : Criminal Misc. A  
 Petition no. 7526 of 2015 in Special Leave Petition (Crl.) No.  
 1446 of 2004

From the Judgment and Order dated 07.11.2003 of the  
 High Court of Judicature at Allahabad in Criminal Appeal No. B  
 2297 of 1978

Santosh Kumar Tripathi for the Petitioner.

The Order of the Court was delivered

**ORDER** C

1. This application has been filed to release the applicant  
 from the prison on the ground mentioned in the petition that  
 the petitioner-applicant has already served the sentence for  
 more than 10 years and still is in jail. The petitioner-applicant D  
 was sentenced for life imprisonment for commission of offence  
 under Section 302 of the Indian Penal Code, 1860 ("IPC" for  
 short). Subsequent thereto he filed an application for  
 declaration of his juvenility on the date of the incident, before E  
 the competent Court of jurisdiction, under the advice of his  
 counsel, being Application No.259 of 2013. The Juvenile  
 Justice Board vide its order dated 16.11.2013, a copy whereof  
 is also annexed hereto, arrived at the conclusion that the age  
 of the applicant on the date of the incident was 15 years 11 F  
 months 26 days only and thereby he was below 18 years at  
 the time of occurring of incident. Accordingly, by the said order  
 the Juvenile Justice Board declared him as a juvenile offender.  
 It further appears that before the Juvenile Justice Board the G  
 applicant-petitioner produced a transfer certificate wherein his  
 date of birth was recorded as December 25, 1960.

2. Learned counsel appearing for the petitioner-applicant  
 submitted that in view of the aforesaid fact the petitioner- H  
 applicant should be given exemption under the provisions of

A Juvenile Justice (Care and Protection of Children) Act, 2000. He further drew our attention to the certificate issued by the Senior Jail Superintendent, Central Jail, Agra, certifying the period he is in jail. The learned counsel appearing in this matter further submitted that according to the prosecution the  
B petitioner-applicant was charged under Section 302 of the Indian Penal Code, 1860 for committing the murder of one Nathi Lal on 21<sup>st</sup> December, 1976 at about 6.30 P.M. by causing him gunshot injury. The petitioner-applicant pleaded  
C juvenility before the Trial Court in his statement recorded under Section 313 of the Code of Criminal Procedure, 1973 on 28<sup>th</sup> July, 1978, along with other grounds in his defence, but he could not produce the transfer certificate during prosecution being helpless and as a result whereof he had to suffer the sentence under Section 302 IPC culminating to life imprisonment. The  
D special leave petition filed by the petitioner-applicant before this Court was dismissed on 20.08.2004 and the review petition was also dismissed by this Court by its order dated 13.10.2004.

E 3. In these circumstances, the petitioner-applicant had to spend more than 10 years in prison without getting any remedy under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000. We have heard the learned  
F counsel for the petitioner-applicant. We have also considered the decisions cited by the learned counsel.

G 4. In the case of *Upendra Pradhan v. State of Orissa*, 2015 (5) SCALE 634, wherein the appeal of the accused was allowed granting him the benefit of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, this Court observed:

H “The learned counsel for the appellant raises the plea of juvenility under Section 7(A) of the Juvenile Justice (Care and Protection) Act, 2000. The plea can be raised before

any Court and at any point of time. We feel that the stand taken by the counsel is correct and we will look into the present lis keeping in mind the juvenility of the accused appellant at the time of commission of the crime. As stated earlier, the age of the accused appellant was less than 18 years at the time of the incident. It has been brought to our notice that the appellant has undergone about 8 years in jail. The appellant falls within the definition of "juvenile" under Section 2(k) of the Juvenile Justice (Care and Protection of children) Act, 2000. He can raise the plea of juvenility at any time and before any court as per the mandate of Section 7(a) and has rightly done so. It has been proved before us, as per the procedure given in the Rule 12 of the Juvenile Justice Model Rules, 2007, and the age of the accused appellant has been determined following the correct procedure and there is no doubt regarding it.

On the question of sentencing, we believe that the accused appellant is to be released. In the present matter, in addition to the fact that he was a juvenile at the time of commission of offence, the accused appellant is entitled to benefit of doubt. Therefore, the conviction order passed by the High Court is not sustainable in law. Assuming without conceding, that even if the conviction is upheld, Upendra Pradhan has undergone almost 8 years of sentence, which is more than the maximum period of three years prescribed under Section 15 of the Juvenile Justice Act of 2000. Thus, giving him the benefit under the Act, we strike down the decision of the High Court. This Court has time and again held in a plethora of judgments on the benefit of the Act of 2000 and on the question of sentencing."

We have also noticed that in *Ajay Kumar v State of M.P.*, (2010) 15 SCC 83, this Court observed as follows:

A “In the light of the aforesaid provisions, the maximum  
period for which a juvenile could be kept in a special  
home is for three years. In the instant case, we are  
informed that the appellant who is proved to be a juvenile  
B has undergone detention for a period of about  
approximately 14 years. **In that view of the matter,  
since the appellant herein was a minor on the date  
of commission of the offence and has already  
undergone more than the maximum period of  
C detention as provided for under section 15 of the  
Juvenile Justice Act, by following the provisions of  
Rule 98 of Juvenile Justice Rules, 2007 read with  
Section 15 of the Juvenile Justice Act, we allow the  
appeal with a direction that the appellant be released  
D forthwith.”**

(Emphasis Supplied)

The same view was followed in *Hakim v. State*, (2014)  
13 SCC 427, and *Lakhan Lal v. State of Bihar*, (2011) 2  
E SCC 251.

5. Hence, we think that the petitioner-applicant should get  
the benefit under the said Act since he was a juvenile on the  
date of commission of the offence. In view of the above, this  
F appeal is allowed and the impugned judgment and order  
passed by the Trial Court as also the High Court are set aside.  
The petitioner-applicant is directed to be released forthwith.

Devika Gujral

Appeal allowed.

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